

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
3 Notice of Deposition
4 10-CV-5596 (ADS) (ETB)

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5 NICHOLAS BERNHARD, RALPH NATALE, KIRK
6 CONAWAY and ROY KOHN, as TRUSTEES OF THE
7 HEALTH FUND 917 AND THE LOCAL 917
8 PENSION FUND; HEALTH FUND 917 AND THE
9 LOCAL 917 PENSION FUND,

Plaintiffs,

- against -

10 CENTRAL PARKING SYSTEM OF NEW YORK INC.,
11 and JOHN DOE,
12

Defendants.

-----x

14 360 West 31st Street
15 New York, New York

16 October 28, 2011
17 11:10 a.m.

18 EXAMINATION BEFORE TRIAL of CENTRAL PARKING
19 SYSTEM OF NEW YORK INC., BY SONYA MITCHELL, one
20 of the Defendants herein, taken by the
21 Plaintiffs, held at the above-mentioned time and
22 place before Anthony Giarro, a Notary Public of
23 the State of New York.
24
25

<p>Page 38</p> <p>1 SONYA MITCHELL</p> <p>2 A We may have some managers</p> <p>3 that we have made contributions for.</p> <p>4 They're really not managers. They're</p> <p>5 foremen.</p> <p>6 Q What are their job titles?</p> <p>7 A Foremen.</p> <p>8 Q Has Central Parking made any</p> <p>9 contributions for people who are</p> <p>10 employees whose job titles are manager?</p> <p>11 A No.</p> <p>12 Q Has Central Parking made any</p> <p>13 contributions for any employee whose job</p> <p>14 title is assistant manager?</p> <p>15 A Not assistant manager in my</p> <p>16 system, no. They would also be listed</p> <p>17 as -- some would also be listed as</p> <p>18 foremen.</p> <p>19 Q Why would an assistant</p> <p>20 manager be also listed as a foreman?</p> <p>21 A My system says foreman, but</p> <p>22 some of them may be called an assistant</p> <p>23 manager.</p> <p>24 Q Where would they be called</p> <p>25 an assistant manager?</p>	<p>Page 40</p> <p>1 SONYA MITCHELL</p> <p>2 there were people who might be called</p> <p>3 assistant managers and yet they were</p> <p>4 foremen?</p> <p>5 A Yes.</p> <p>6 Q Would documents provided to</p> <p>7 the auditors have identified them as</p> <p>8 assistant managers?</p> <p>9 A Possibly.</p> <p>10 Q What documents would</p> <p>11 identify them as foremen, not assistant</p> <p>12 managers?</p> <p>13 A Our computer-generated</p> <p>14 documents would identify them as foremen</p> <p>15 because that's what they are in the</p> <p>16 system.</p> <p>17 Q Are foremen covered by the</p> <p>18 collective bargaining agreement?</p> <p>19 A Yes.</p> <p>20 Q Are assistant managers</p> <p>21 covered by the collective bargaining</p> <p>22 agreement?</p> <p>23 A No.</p> <p>24 Q If you have a document that</p> <p>25 identifies them as foremen and assistant</p>
<p>Page 39</p> <p>1 SONYA MITCHELL</p> <p>2 A Just among themselves or</p> <p>3 within the field, in operations.</p> <p>4 Q There were documents given</p> <p>5 to the auditors in order to perform this</p> <p>6 audit; that's correct, yes?</p> <p>7 A Yes.</p> <p>8 Q Did any of those documents</p> <p>9 do note employees as being managers?</p> <p>10 A Yes. They asked for a list</p> <p>11 of managers.</p> <p>12 Q Were there any payroll or</p> <p>13 database documents that identified any of</p> <p>14 these employees as being managers?</p> <p>15 A No.</p> <p>16 Q Were there any documents</p> <p>17 given to the auditors while they were</p> <p>18 performing their audit that identified</p> <p>19 employees as foremen?</p> <p>20 A Possibly.</p> <p>21 Q Were there any documents</p> <p>22 given to the auditors during the audit</p> <p>23 that identified employees as supervisors?</p> <p>24 A Possibly.</p> <p>25 Q You had said before that</p>	<p>Page 41</p> <p>1 SONYA MITCHELL</p> <p>2 managers, how would you differentiate</p> <p>3 whether they were covered by the</p> <p>4 collective bargaining agreement?</p> <p>5 A Whatever is in our system.</p> <p>6 Q Your system is a</p> <p>7 computerized system?</p> <p>8 A Yes, it is.</p> <p>9 Q Were printouts from the</p> <p>10 computerized system ever provided to the</p> <p>11 auditors?</p> <p>12 A I'm sure there were, yes.</p> <p>13 Original data came from our system.</p> <p>14 Q If I'm recalling correctly,</p> <p>15 you said that Central Parking has paid no</p> <p>16 contributions for anybody who's a</p> <p>17 manager?</p> <p>18 A Anybody who was excluded</p> <p>19 from the collective bargaining agreement.</p> <p>20 Q That's not my question. Has</p> <p>21 Central Parking made any contributions</p> <p>22 for anybody for whom documentation</p> <p>23 identified them as a manager?</p> <p>24 A Not to my knowledge.</p> <p>25 Q Did anyone else at Central</p>

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<p>Page 42</p> <p>1 SONYA MITCHELL</p> <p>2 Parking review the findings?</p> <p>3 A No.</p> <p>4 Q Did you discuss the findings</p> <p>5 with anybody else?</p> <p>6 A Yes.</p> <p>7 MR. ROWE: Which findings?</p> <p>8 You're talking about the auditor's</p> <p>9 findings?</p> <p>10 MS. BRUNO: The auditor's</p> <p>11 findings.</p> <p>12 Q By findings, I mean the</p> <p>13 auditor's reports that were sent to you</p> <p>14 as a determination of what amounts the</p> <p>15 funds believed were due.</p> <p>16 A Okay.</p> <p>17 Q The term of art I'm going to</p> <p>18 use is findings. Did you discuss the</p> <p>19 findings with anybody else at Central</p> <p>20 Parking with the exception of your</p> <p>21 attorney?</p> <p>22 A Yes.</p> <p>23 Q Who did you speak with?</p> <p>24 A I've spoken with my human</p> <p>25 resources manager. I've spoken with my</p>	<p>Page 44</p> <p>1 SONYA MITCHELL</p> <p>2 Q Did he look at the findings?</p> <p>3 A Yeah. I gave him a copy. I</p> <p>4 would think he did.</p> <p>5 Q Did he express to you any</p> <p>6 direction on what you should do?</p> <p>7 A No, he didn't.</p> <p>8 Q Did he express to you any</p> <p>9 opinion as to the validity of the</p> <p>10 findings?</p> <p>11 A No, he didn't.</p> <p>12 Q Who was the human resources</p> <p>13 manager you spoke with?</p> <p>14 A Edy Albizu.</p> <p>15 Q When did you speak with her?</p> <p>16 A I don't know what the date</p> <p>17 is. I don't know what date. I think we</p> <p>18 may have had a couple of conversations as</p> <p>19 well.</p> <p>20 Q What was the sum and</p> <p>21 substance of those conversations?</p> <p>22 A Probably just talking about</p> <p>23 any pending audits we had, where we stood</p> <p>24 on them.</p> <p>25 Q Did you have any discussions</p>
<p>Page 43</p> <p>1 SONYA MITCHELL</p> <p>2 then boss, who was Pete Buscher.</p> <p>3 Q Anyone else?</p> <p>4 A I believe that's it, and my</p> <p>5 attorney, the attorney in our corporate</p> <p>6 office as well.</p> <p>7 Q Who was the attorney in the</p> <p>8 corporate office?</p> <p>9 A Chris Katl.</p> <p>10 MS. BRUNO: Is he co-counsel</p> <p>11 with you?</p> <p>12 MR. ROWE: No.</p> <p>13 Q When did you speak with</p> <p>14 Mr. Buscher?</p> <p>15 A I've probably had several</p> <p>16 conversations with him about the audit,</p> <p>17 probably initially when they first came</p> <p>18 in. And he also knows what the</p> <p>19 findings -- or knew -- he's no longer</p> <p>20 employed -- what the findings were and</p> <p>21 what my response were to those findings.</p> <p>22 Q Did you tell Mr. Buscher</p> <p>23 that you believed some of the findings</p> <p>24 were not accurate?</p> <p>25 A Absolutely.</p>	<p>Page 45</p> <p>1 SONYA MITCHELL</p> <p>2 with her on this specific audit, the 2004</p> <p>3 New York?</p> <p>4 A Yes.</p> <p>5 Q What was the sum and</p> <p>6 substance of discussions strictly on that</p> <p>7 audit?</p> <p>8 A I can't say verbatim what it</p> <p>9 was, probably it was either the earlier</p> <p>10 part of the year or last year sometime.</p> <p>11 Q What was the sum and</p> <p>12 substance? What did you discuss?</p> <p>13 A Specifically the audit</p> <p>14 findings here.</p> <p>15 Q Did she review the findings?</p> <p>16 A No, she didn't.</p> <p>17 Q Did you express to her that</p> <p>18 you believed that not all the findings</p> <p>19 were valid?</p> <p>20 A That I believed they were</p> <p>21 valid?</p> <p>22 Q That not all of them were</p> <p>23 valid.</p> <p>24 A Yes.</p> <p>25 Q Did she give you any</p>

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<p style="text-align: right;">Page 46</p> <p>1 SONYA MITCHELL</p> <p>2 direction or anything like that?</p> <p>3 A No.</p> <p>4 Q Did she express any opinion</p> <p>5 regarding that?</p> <p>6 A No.</p> <p>7 Q So this was just an</p> <p>8 informative, hey, I looked at the</p> <p>9 findings and I don't think they all need</p> <p>10 to be paid?</p> <p>11 A Something of the sort.</p> <p>12 Q Why did you speak with</p> <p>13 Mr. Katl?</p> <p>14 A Because he knows of any</p> <p>15 legal issues that we have within the</p> <p>16 city. He's our corporate counsel.</p> <p>17 Q Did you speak with him just</p> <p>18 to tell him this was there or did you</p> <p>19 actually discuss the findings with him?</p> <p>20 A No.</p> <p>21 MR. ROWE: Objection.</p> <p>22 MS. BRUNO: On the grounds</p> <p>23 of?</p> <p>24 MR. ROWE: Attorney-client</p> <p>25 privilege.</p>	<p style="text-align: right;">Page 48</p> <p>1 SONYA MITCHELL</p> <p>2 Q Has Central Parking paid any</p> <p>3 contributions for any area managers?</p> <p>4 A Absolutely not.</p> <p>5 Q Has Central Parking paid any</p> <p>6 contributions for any area managers who</p> <p>7 did not have the authority to hire,</p> <p>8 promote, discipline or effect changes in</p> <p>9 an employee's status?</p> <p>10 A They don't exist.</p> <p>11 Q Why not?</p> <p>12 A Because an area manager can</p> <p>13 effectuate change.</p> <p>14 Q What changes can an area</p> <p>15 manager do?</p> <p>16 A They can hire, they can</p> <p>17 terminate, disciplinary action.</p> <p>18 Q Has Central Parking paid any</p> <p>19 contributions for any supervisors?</p> <p>20 A Not to my knowledge.</p> <p>21 Q And why not?</p> <p>22 A Because the job code</p> <p>23 supervisor is not included in my data.</p> <p>24 Q So there is nobody at</p> <p>25 Central Parking known as a supervisor?</p>
<p style="text-align: right;">Page 47</p> <p>1 SONYA MITCHELL</p> <p>2 MS. BRUNO: He's not</p> <p>3 representing her or Central.</p> <p>4 MR. ROWE: I'm going to</p> <p>5 object. Don't ask the question.</p> <p>6 Q Is there anyone else that</p> <p>7 you discussed your review with?</p> <p>8 A My staff, the auditors.</p> <p>9 Q Is there somebody to whom</p> <p>10 you're supposed to report or you're</p> <p>11 supposed to report your analysis of the</p> <p>12 findings? Is there somebody who expected</p> <p>13 to hear from you what you thought of the</p> <p>14 findings that you had to tell that to in</p> <p>15 the organization?</p> <p>16 A No.</p> <p>17 Q Has Central Parking paid</p> <p>18 contributions for any supervisory</p> <p>19 employees?</p> <p>20 A Contributions are paid based</p> <p>21 upon job code.</p> <p>22 Q I'm going to ask you to</p> <p>23 please answer it with a yes or no. To</p> <p>24 your knowledge --</p> <p>25 A I don't know.</p>	<p style="text-align: right;">Page 49</p> <p>1 SONYA MITCHELL</p> <p>2 A We have supervisors.</p> <p>3 Q Then what would they be</p> <p>4 listed in your data as?</p> <p>5 A A supervisor. I would hope</p> <p>6 that they would be listed as a</p> <p>7 supervisor.</p> <p>8 Q But you just said the job</p> <p>9 supervisor is not in your data, unless I</p> <p>10 misunderstood you.</p> <p>11 A I contribute for attendants,</p> <p>12 cashiers, foremen.</p> <p>13 Q I understand that. So you</p> <p>14 do not contribute for anyone who is not</p> <p>15 an attendant, a cashier or a foreman?</p> <p>16 A Well, the maintenance</p> <p>17 contract has maintenance staff; but, no,</p> <p>18 I don't.</p> <p>19 Q So if somebody is not in one</p> <p>20 of those four job descriptions, you do</p> <p>21 not contribute for them?</p> <p>22 A That's correct.</p> <p>23 Q And you have job codes for</p> <p>24 those four positions?</p> <p>25 A Yes, I do.</p>

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1 SONYA MITCHELL
 2 Q Would people in those
 3 positions ever have a job code or a job
 4 description that lists them as something
 5 else?
 6 A It shouldn't.
 7 Q So if there is a job code or
 8 a job description listing somebody as a
 9 manager or assistant manager, they would
 10 not be performing the work of any of
 11 those four jobs that you just said you
 12 contribute for?
 13 A They shouldn't be, no.
 14 Q I'm just going to go back --
 15 and I apologize, I may have asked this
 16 already -- you said there were foremen
 17 who are also considered managers?
 18 A They may call them -- they
 19 may be the lead person. They may call
 20 them managers within the facility, within
 21 the location.
 22 Q What would their job code
 23 indicate?
 24 A A foreman would be a
 25 foreman.

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1 SONYA MITCHELL
 2 A No.
 3 Q Has Central Parking paid any
 4 portion of the findings?
 5 A Not as of yet. It's still
 6 open.
 7 Q So does that mean that
 8 Central Parking will not pay any portion
 9 of the findings until the entirety of the
 10 findings have been determined?
 11 A Well, we do audits all the
 12 time. And generally what happens is when
 13 you respond to the initial, the auditors
 14 will review and determine whether or not
 15 they agree with our response to the
 16 audit, and they will send us a final
 17 letter.
 18 Q Is the reason you have not
 19 paid is because you have not received a
 20 final letter from the auditors?
 21 A Final audit findings letter
 22 or communication.
 23 Q Is it your contention that
 24 Plaintiffs' Exhibit 2, which are the
 25 letters from the fund, saying final

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1 SONYA MITCHELL
 2 Q The job code would indicate
 3 a foreman?
 4 A Yes.
 5 Q Have you determined whether
 6 any of the findings are valid, any of the
 7 individual findings are valid for any of
 8 the employees?
 9 A Yes, there were some
 10 findings.
 11 Q Have you told any
 12 representative, employee, manager, owner
 13 or principal of Central Parking that you
 14 determined that certain of the findings
 15 are valid?
 16 A I shared that with my
 17 manager.
 18 Q Did you discuss with your
 19 manager whether to pay that portion of
 20 the findings?
 21 A No. The audit was still
 22 open.
 23 Q So the manager did not
 24 direct you to pay or to not pay that
 25 portion of the findings at this time?

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1 SONYA MITCHELL
 2 results of the payroll inspection, the
 3 findings is not, in fact, the final audit
 4 letter that you would need to pay a
 5 portion of the findings?
 6 A No, because this is the
 7 initial. This is what their findings
 8 are, and then I responded to it.
 9 Q So if the auditors sent you
 10 a letter tomorrow, saying this is our
 11 final findings, that's what you would
 12 need in order to pay --
 13 A If I agreed with it, yes.
 14 Q If you didn't agree with the
 15 whole thing, then you would pay no
 16 portion of it?
 17 A Then I would let them know
 18 what I didn't agree to.
 19 Q If you received a final
 20 letter and you agreed with a portion of
 21 it and disagreed with a portion of it,
 22 would you pay the portion that you agreed
 23 to, that you agreed with?
 24 A I would usually wait until
 25 there is a determination because at some

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<p style="text-align: right;">Page 54</p> <p>1 SONYA MITCHELL</p> <p>2 point, we're either going to agree --</p> <p>3 we're going to agree to something at that</p> <p>4 point.</p> <p>5 Q So in other words, if I'm</p> <p>6 understanding you correctly, if you</p> <p>7 agreed with some of the findings and</p> <p>8 disagreed with others, you would not pay</p> <p>9 the portion with which you agreed until</p> <p>10 the entire thing was worked out?</p> <p>11 A I don't generally do it that</p> <p>12 way. They have many other audits,</p> <p>13 further funds that we do, and it's not a</p> <p>14 practice.</p> <p>15 Q Do you have the final</p> <p>16 authority to determine which findings</p> <p>17 will and will not be paid?</p> <p>18 A Well, it's based upon my</p> <p>19 response to the audit.</p> <p>20 Q Is there anybody from whom</p> <p>21 you must get approval?</p> <p>22 A No.</p> <p>23 Q So you can decide, okay,</p> <p>24 this is payable, this is not, we and the</p> <p>25 auditors have reached an agreement and on</p>	<p style="text-align: right;">Page 56</p> <p>1 SONYA MITCHELL</p> <p>2 MS. BRUNO: Can you mark</p> <p>3 this, please?</p> <p>4 (The above-referred-to</p> <p>5 document was marked as Plaintiffs'</p> <p>6 Exhibit 5 for identification, as of</p> <p>7 this date.)</p> <p>8 Q I'm going to give you</p> <p>9 Plaintiffs' Exhibit 5, which is</p> <p>10 Defendants' response to Plaintiffs' first</p> <p>11 interrogatories and request for</p> <p>12 production of documents and Defendants'</p> <p>13 supplemental response to Plaintiffs'</p> <p>14 first interrogatories for production of</p> <p>15 documents with a stack of documents. You</p> <p>16 can open it and take it out of order if</p> <p>17 you want to look through.</p> <p>18 A Okay.</p> <p>19 Q Have you seen these</p> <p>20 documents before?</p> <p>21 A Yes.</p> <p>22 Q Can you tell me what you</p> <p>23 believe them to be?</p> <p>24 A Well, it appears that these</p> <p>25 are my responses to the audit findings,</p>
<p style="text-align: right;">Page 55</p> <p>1 SONYA MITCHELL</p> <p>2 your say so, that can be paid?</p> <p>3 A Yes. I'm accurate or try my</p> <p>4 best to be accurate in my findings.</p> <p>5 Q Does anybody else have the</p> <p>6 authority to do this, anybody else at</p> <p>7 Central Parking?</p> <p>8 A Yes, certainly.</p> <p>9 Q Who else would have that</p> <p>10 authority?</p> <p>11 A My boss would have the</p> <p>12 authority.</p> <p>13 Q Who is your boss?</p> <p>14 A Currently, it would be under</p> <p>15 Hector Chevalier.</p> <p>16 Q Have you discussed the</p> <p>17 findings with him?</p> <p>18 A I did initially. I may have</p> <p>19 had a short conversation with him but</p> <p>20 nothing -- no.</p> <p>21 Q So he's left the discretion</p> <p>22 to you?</p> <p>23 A Yes.</p> <p>24 Q Anyone else?</p> <p>25 A Just my previous boss.</p>	<p style="text-align: right;">Page 57</p> <p>1 SONYA MITCHELL</p> <p>2 backup.</p> <p>3 Q The documents on top of</p> <p>4 them, which are the Defendants' responses</p> <p>5 to Plaintiffs' interrogatories, have you</p> <p>6 seen those before?</p> <p>7 A Yes. I believe I have seen</p> <p>8 this one.</p> <p>9 Q The stack of documents that</p> <p>10 you're holding that you said were your</p> <p>11 responses were produced in response to</p> <p>12 Plaintiffs' request for documents. Were</p> <p>13 you asked to assemble documents in order</p> <p>14 to respond to those requests?</p> <p>15 A To assemble the documents to</p> <p>16 respond to?</p> <p>17 Q Or to provide documents that</p> <p>18 would respond to the interrogatories.</p> <p>19 A I'm sure I was asked to</p> <p>20 provide some documents. I may have</p> <p>21 provided more.</p> <p>22 Q And these are documents</p> <p>23 that, to your knowledge, you provided to</p> <p>24 respond to the requests?</p> <p>25 A Yes. They look like my</p>

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